

for reasons related to patentability. Applicants reserve the right to file a divisional application directed to claims containing generic description.

The proviso clause recited in the independent claims is added in order to exclude specific combinations provided for in EP 569 944 (U.S. equivalents: U.S. Patent Nos. 5,461,019 and 5,696,031), WO 96/41547 (U.S. Patent No. 5,990,047) and WO 96/32012 (U.S. Patent No. 95,987,432). These prior publications were mentioned in the European Search Report that formed the basis of the IDS filed May 4, 2000.

If the Examiner re-issues a Requirement for an Election of Species with the new set of claims, Applicants again elect herbicidal combinations comprising glufosinate-ammonium (A1.2) and mesotrione (B1.16). Applicants again traverse this requirement for reasons of record if this requirement is not made solely for examination purposes. Applicants urge that the data in the specification supports their contention that the claimed combinations are synergistic. Claim 21, 22, 23, 28, 37 and 38 are specifically directed to compositions for which there is in the specification.

In the parent application, the Examiner argued that there was not unity of inventors "because synergy remains an unpredictable property." Office Action at 2. In order to advance prosecution, the new set of claims avoids the sole use of generic terms and provides specific combination partners, which one can reasonably conclude are synergistic based upon the data provided in the description. Accordingly, it is urged that Requirement is improper and should be withdrawn.

The new set of claims renders the rejection of claim 1 to 6 and 9 to 12 under 35 U.S.C. § 101 moot and withdrawal of this rejection is requested.

translocation. Symptoms are whitening of leaves, followed by necrosis of the meristematic tissue.

Hence, mesotrione is completely different from alloxydim in terms of its mode of action. Thus, two herbicides are not recognized in the art as equivalent. Hence, the practitioner would not be motivated to substitute mesotrione for alloxydim in the herbicidal compositions taught in Takematsu and the rejection does not establish a *prima facie* case of obviousness. Moreover, Carter does not correct for this deficiency since Carter provides for novel benzoylcyclohexane diones and fails to teach specific synergistic mixtures of the novel benzoylcyclohexane diones with other herbicides. Thus, there is no motivation to combine the benzoylcyclohexane diones of Carter with the glyphosate disclosed in Takematsu.

Thus, in view of the foregoing, it is urged that the rejection does not establish a *prima facie* case of obviousness and the reconsideration and withdrawal of the rejection are requested.

Favorable action is earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By: 

Mark W. Russell
Registration No. 37,514
745 Fifth Avenue
New York, New York 10151